

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 924 of 1998

in

SPECIAL CIVIL APPLICATION No 1967 of 1998

For Approval and Signature:

Hon'ble ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and
MR.JUSTICE K.M.MEHTA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

SHAH SEVANTILAL DALSUKHRAM

Versus

PATEL MITHABHAI TRIBHOVANDAS

Appearance:

MR MI MERCHANT for Appellants

MR RA SEJPAL for Respondent No. 1

MR JOSHI,ASSTT.GOVERNMENT PLEADER for Respondent No. 2, 3

CORAM : ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and
MR.JUSTICE K.M.MEHTA

Date of decision: 05/11/1999

ORAL JUDGEMENT

Per Thakker, Actg. C.J.

This appeal is filed against an interim order passed by the learned Single Judge in Special Civil Application No. 1967 of 1998 on July 2, 1998. The said order reads as under :

"Heard learned advocate Mr. Sejpal on behalf of the petitioner, learned AGP Ms. Talati on behalf of respondents Nos.1 and 2 and learned advocate Mr. Merchant though notice is not issued to respondent No.3, voluntarily appeared. Admit. Rule returnable on 15th July 1998. Till then, the proceedings before the Assistant Charity Commissioner under section 22 of the Bombay Public Trusts Act are stayed. At this stage, learned advocate Mr. Merchant request for stay of this order which is rejected."

An inquiry under Section 22 of Bombay Public Trusts Act, 1950 (hereinafter referred to as 'the Act') is pending before the Assistant Charity Commissioner, Mehsana. Since inquiry is under Sec. 22 read with provisions of Section. 64 of the Act, it has to be conducted by the Deputy Charity Commissioner, Assistant Charity Commissioner or Charity Commissioner, as the case may be, in accordance with the provisions of the Bombay Public Trusts Rules (hereinafter referred to as 'the Rules') by taking assistance of assessors. Chapter IX of the Act provides for list of assessors, persons summoned to attend at the time and place specified, cases in which assessors shall be summoned, etc. Section 65 provides for number of assessors to be called, and eventualities where assessors are not able to attend or are prevented from attending at the time of hearing before the Charity Commissioner, Deputy Charity Commissioner or Assistant Charity Commissioner.

It is an admitted position that a list of assessors prepared by the office of respondent No.2 has come to an end and no new list is prepared. The inquiry relates to Section 22 which requires help of assessors. The question, therefore, before the Deputy Charity Commissioner was as to what should be done in such matters. By an order dated January 31, 1998, the Assistant Charity Commissioner directed both the parties to submit names of assessors so that an appropriate decision for appointment of assessors can be taken by him

on the returnable date. The said order was challenged before the learned Single Judge. Learned Single Judge has stayed the order passed by the Assistant Charity Commissioner, Mehsana.

On October 13, 1999, notice was issued by the Division Bench for admission as well as final hearing by making it returnable on November 1, 1999. Today, we have heard the parties.

Mr. Merchant for the appellants contended that an error of law has been committed by the learned Single Judge in granting interim relief by which the inquiry under Section 22 is stayed. He submitted that the legislature has provided an answer of such situation in sub-section (4) of section 65. Sub-section (4) of Section 65 is relevant which reads thus:

"(4) If all the assessors are prevented from attending or absent themselves, without sufficient cause, the inquiry shall be proceeded with the aid of fresh assessors;

Provided that if the Charity Commissioner (or Deputy or Assistant Charity Commissioner) holding the inquiry is satisfied that for sufficient and adequate reasons the inquiry not be delayed, he shall complete the inquiry and (whether the inquiry is held by the Deputy or Assistant Charity commissioner he shall report the matter to the Charity Commissioner".

He, therefore, submitted that if the Deputy or Assistant Charity Commissioner is satisfied for sufficient and adequate reasons that the inquiry need not be delayed, he can complete it without the help of assessors. In that case, he will have to report the matter to the Charity Commissioner. According to Mr. Merchant, the proviso requires two things to be done by the Deputy or Assistant Charity Commissioner in such cases. Firstly, he must be satisfied for sufficient and adequate reasons that inquiry need not be delayed. Secondly, after completion of inquiry, he must report the matter to the Charity Commissioner. By granting interim relief, the learned Single Judge has committed an error of law which requires to be corrected.

Mr. Sejpal, on the other hand, submitted that it is true

that proviso to sub-section (4) of Section 65 enables Assistant or Deputy Charity Commissioner to decide a matter on fulfilment of two conditions mentioned therein. He, however, submitted that Assistant Charity Commissioner has no power or authority to direct the parties to submit names of assessors of their choice so that assessors can be chosen by the Assistant Charity Commissioner and the matter can be decided. Looking to the provisions of the Act and the Rules, this is not permissible. The learned Single Judge, therefore, rightly granted interim relief.

Mr. Joshi, learned AGP submitted that there is no list of assessors and, hence, the order passed by the Assistant Charity Commissioner ought not to have been disturbed by the learned Single Judge.

In the facts and circumstances, in our opinion, the contention raised by Mr. Sejpai is well founded that there is no provision either in the Act or in the Rules permitting parties to submit a list of assessors from which assessors can be appointed by the Assistant Charity Commissioner. Such action, therefore, could not have been taken by the Assistant Charity Commissioner. At the same time, however, the proviso to sub-section (4) of Section 65 must also be kept in mind. It enables the Deputy or Assistant Charity Commissioner to hold inquiry if he is satisfied for sufficient and adequate reasons to be recorded that the inquiry need not be delayed and that as soon as inquiry is completed, he reports to the Charity Commissioner. In our opinion, therefore, such course can be adopted by the Assistant Charity Commissioner if the case in his opinion falls under the proviso to Section 65 (4).

For the foregoing reasons, in our opinion, ends of justice will be met if we allow the appeal by permitting Assistant Charity Commissioner to follow provisions of sub-section (4) read with proviso to Section 65 subject to the conditions enumerated therein and to decide the matter in accordance with law. The appeal is accordingly allowed. The order passed by the learned Single Judge is modified to the aforesaid extent. In view of the order passed in appeal, SCA automatically gets disposed of and is accordingly ordered to be disposed of. In the facts and circumstances of the case, there shall be no order as to costs all throughout.

parekh

